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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------------|
| 10/806,267 | 03/23/2004 | Takashi Ohno | KKP-0276 | 1916 |
| 23353 7590 05/09/2008 RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036 | | | EXAMINER YOON, TAE H | |
| | | | ART UNIT 1796 | PAPER NUMBER |
| | | | MAIL DATE 05/09/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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|----------------------|--------------------------------|--------------|
| In re application of | Ohno | :DECISION ON |
| Serial no. | 10/806,267 | :PETITION |
| Filed: | March 23, 2004 | : |
| For: | WATER BASED INK FOR BALL-POINT | : |
| | PEN AND BALL-POINT | : |
| | PEN USING THE SAME | : |

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed October 24, 2007.

On March 23, 2006, a first non-final office action was mailed, citing Hattori et al. (U.S. Patent Application Publication 2005/0096410). On December 7, 2006, a final office action was mailed. On April 9, 2007, applicant fled a request for continued examination (RCE). On July 2, 2007, a first non-final office action after the RCE was mailed. On October 24, 2007, a final office action was mailed. All of the office actions have cited Hattori '410.

On February 25, 2008, applicant filed the instant petition under 37 CFR 1.181 to formally request the withdrawal of finality of the Office Action of October 24, 2007.

Applicant's position for the withdrawal of the finality is that the grounds of rejection rely upon Hattori, which has a filing date of October 8, 2003 and that the present application is entitled to the benefit of Japanese Patent Application 2003-084878, filed March 26, 2003, which is earlier than the filing date of the Hattori reference.

DECISION

The record is clear that Hattori is cited as evidence of fact; i.e., the vapor pressures of ethanol, propanol, and butanol. The office action mailed March 23, 2006 states on p. 3, in paragraph 4, "It is well known, as found in Hattori et al. (paragraphs 6-9) that ethanol, propanol and butanol possess vapor pressure of 45 mmHg or 6 kPa, 14.5 mmHg or 1.93 kPa, and 5.5 mmHg or 0.67 kPa, respectively." The office action mailed October 24, 2007 reiterates this concept at p. 3: "...the instantly recited vapor pressure is an inherent property of lower alcohols taught by Ota et al., and Hattori reference is teaching or facts reference under the principle of In re Wilson, 50 CCPA 773, 311 F.2d 266, 135 USPQ 442 (1962))."

Art Unit: 1792

As stated in MPEP 2124,

"In certain circumstances, references cited to show a universal fact need not be available as prior art before applicant's filing date. In re Wilson, 311 F.2d 266, 135 USPQ 442 (CCPA 1962). Such facts include the characteristics and properties of a material or a scientific truism."

Hattori et al. is cited to show the properties of ethanol, propanol, and butanol (i.e., specific materials). Therefore, Applicant's priority date is not relevant to the citation of Hattori et al. to show these universal facts. The finality of the rejection based upon the citation of Hattori et al. as an evidentiary reference was proper.

The petition is **DISMISSED**.



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